

United States
Circuit Court of Appeals
For the Ninth Circuit.

ELUY MILLICH alias "CHARLES MILLER"
and JOHN ENGBLAD,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Alaska, Division No. 1.

FILED

FEB 4 - 1922

F. D. MONCKTON,
CLERK

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Circuit Court of Appeals
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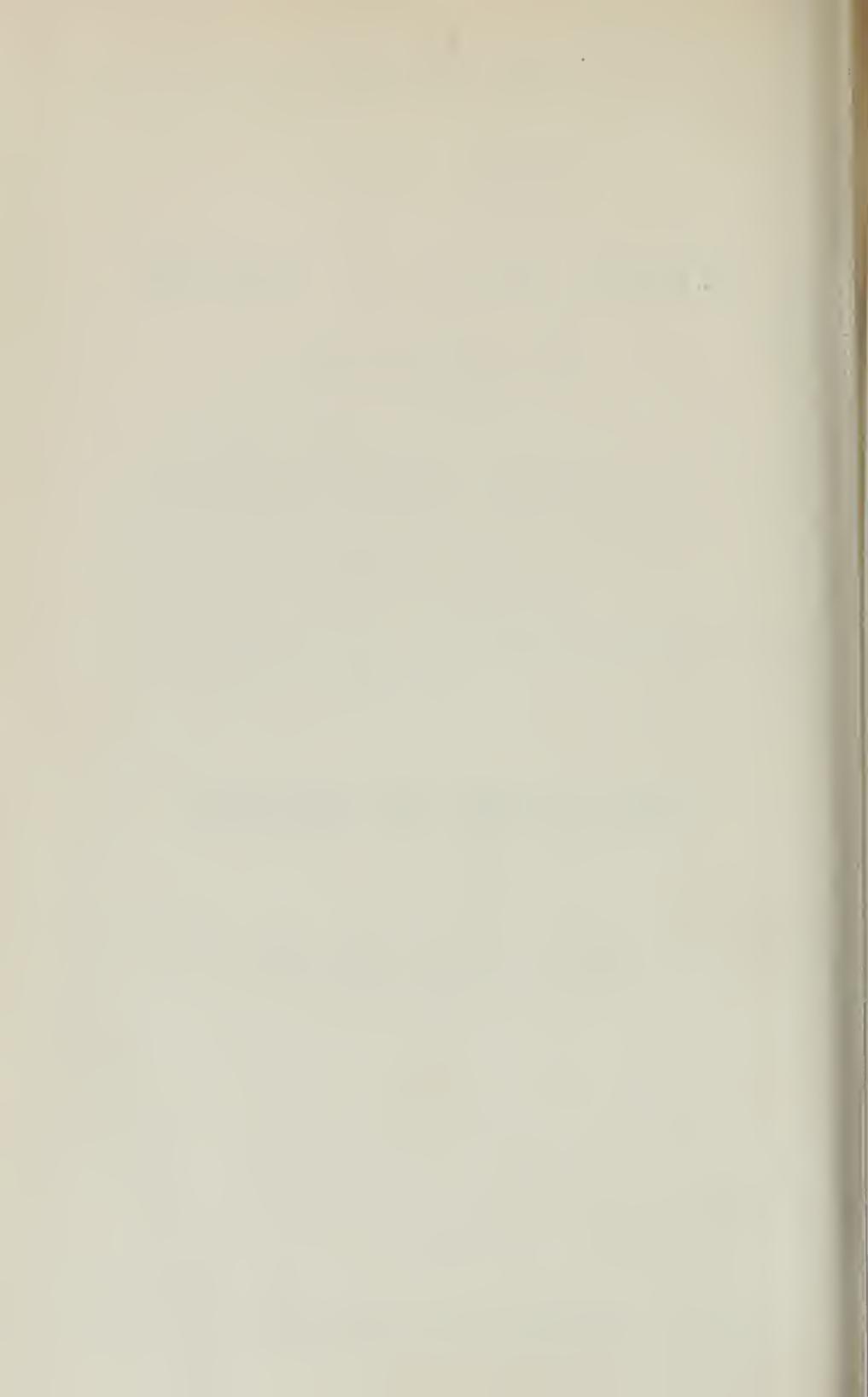
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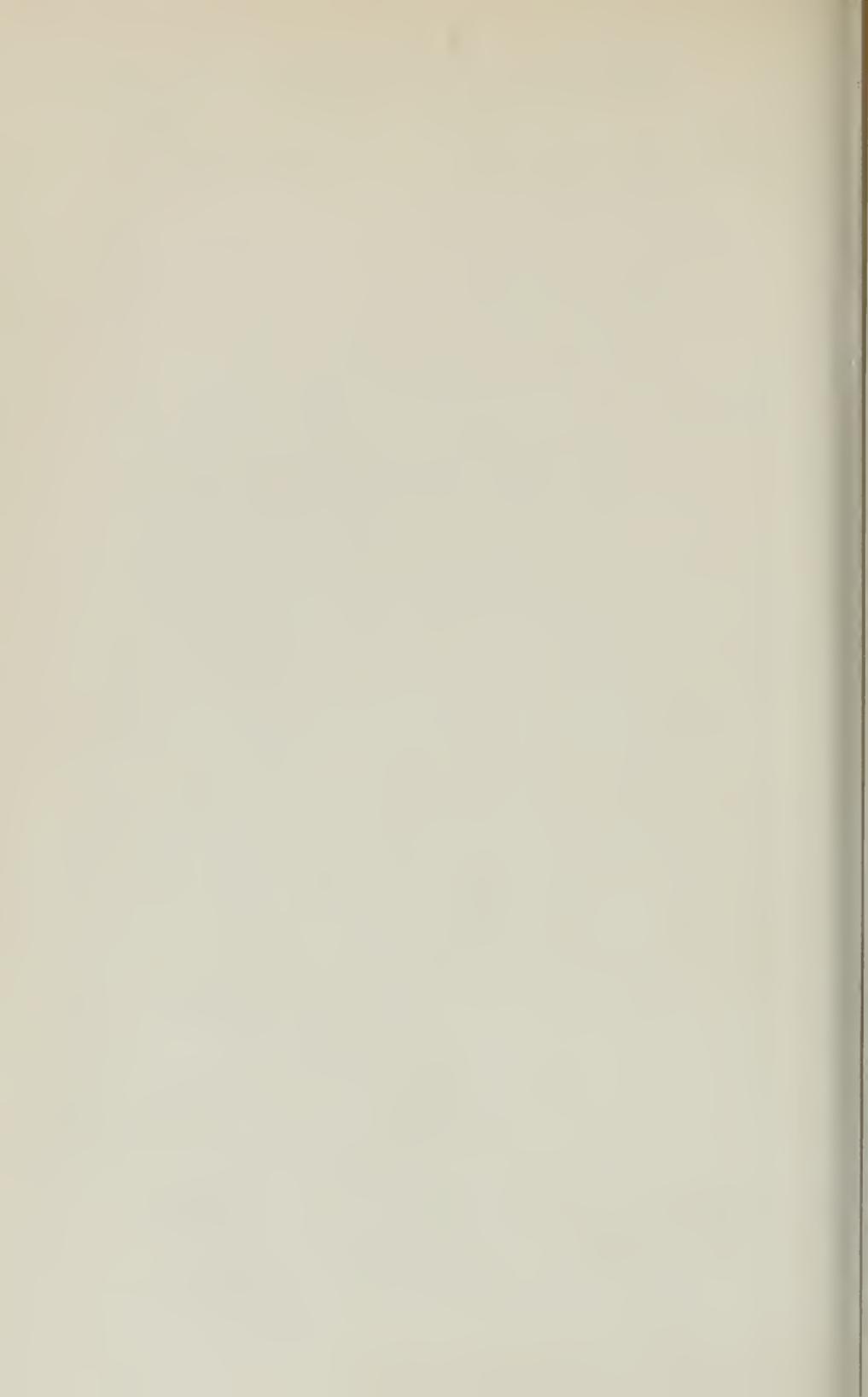
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[Clerk's Note: When deemed likely to be of an important nature errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

HELLENTHAL & HELLENTHAL, Juneau,
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Attorneys for Plaintiffs in Error.

A. G. SHOUP, U. S. Attorney, Juneau, Alaska,
Attorney for Defendant in Error.

District Court for the District of Alaska, Division
No. One.

THE UNITED STATES OF AMERICA
vs.

ELUY MILLICH, *alias* CHARLES MILLER, and
JOHN ENGBLAD.

Indictment.

Alaska Bone Dry Law, Sec. 12 of Selective Service
Act, and Sec. 3242, R. S.

At the Special February term of the District Court
of the United States of America, within and for the
District of Alaska, in the year of our Lord one
thousand nine hundred and twenty-one, begun and
held at Juneau, in said District, beginning Feb-
ruary 21, 1921.

COUNT ONE.

The Grand Jurors of the United States of
America, selected, empaneled, sworn, and charged
within and for the District of Alaska, accuse ELUY
MILLICH, *alias* CHARLES MILLER, and JOHN
ENGBLAD by this indictment of the crime of

ILLEGAL POSSESSION OF INTOXICATING LIQUOR, committed as follows:

The said Eluy Millich, *alias* Charles Miller, and John Engblad, at or near Juneau, within the said District of Alaska, and within the jurisdiction of this Court, on the ninth day of December, in the year of our Lord one thousand nine hundred and twenty, did, in and on the premises known as Alaskan Cafe, adjoining the Alaskan Hotel on the west and being on the north side of Front Street, then and there, knowingly, wilfully and unlawfully have in their possession certain intoxicating liquor, to wit, whiskey containing more than one-half of one per centum of alcohol by volume, the exact amount of said whiskey being unknown to the Grand Jurors is not herein stated, contrary to the form of the statutes in such cases made and provided.

And so the Grand Jurors duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say:

That Eluy Millich, *alias* Charles Miller, and John Engblad did then and there commit the crime of illegal possession of intoxicating liquor, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and [1*] dignity of the United States of America.

COUNT TWO.

The Grand Jurors of the United States of America, selected, empaneled, sworn, and charged

*Page-number appearing at foot of page of original certified Transcript of Record.

within and for the District of Alaska, further accuse Eluy Millich, *alias* Charles Miller, and John Engblad by this indictment of the crime of illegally selling intoxicating liquors, committed as follows:

The said Eluy Millich, *alias* Charles Miller, and John Engblad, at the City of Juneau, within the said District of Alaska, and within the jurisdiction of this Court, on the ninth day of December, in the year of our Lord one thousand nine hundred and twenty, in and on the premises known as the Alaskan Cafe, adjoining the Alaskan Hotel on the west and being on the north side of Front Street, did, then and there, wilfully and unlawfully sell to Richard H. Gleason intoxicating liquor, to wit, whiskey containing more than one-half of one per centum of alcohol by volume, the exact amount of said whiskey being unknown to the Grand Jurors is not herein stated.

And so the Grand Jurors duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say:

That Eluy Millich, *alias* Charles Miller, and John Engblad did then and there commit the crime of illegally selling intoxicating liquors, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America.

COUNT THREE.

And the Grand Jurors of the United States of America, selected, empaneled, sworn, and charged within and for the District of Alaska, further

accuse Eluy Millich, *alias* Charles Miller, and John Engblad by this indictment of the crime of carrying on the business of a retail liquor dealer without having paid the special tax, committed as follows:

That heretofore, to wit, on the ninth day of December, in the year of our Lord one thousand nine hundred and twenty, the said [2] Eluy Millich, *alias* Charles Miller, and John Engblad, at or near Juneau, within the said District of Alaska, and within the jurisdiction of this

3242
R. S.

Court, and in and on the premises known as the Alaskan Cafe, adjoining the Alaskan Hotel on the west and being on the north side of Front Street, did, then and there, knowingly, wilfully, unlawfully and feloniously carry on the business of retail liquor dealers by then and there selling and offering for sale distilled spirits in quantities less than five gallons without having first paid the special tax, as required by law.

And so the Grand Jurors duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say:

That Eluy Millich, *alias* Charles Miller, and John Engblad did then and there commit the crime of carrying on the business of a retail liquor dealer without having paid the special tax, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America.

COUNT FOUR.

And the Grand Jurors of the United States of

America, selected, empaneled, sworn, and charged within and for the District of Alaska, further accuse Eluy Millich, *alias* Charles Miller, and John Engblad by this indictment of the crime of illegally selling intoxicating liquor, committed as follows:

The said Eluy Millich, *alias* Charles Miller, and John Engblad, at or near Juneau, within the said District of Alaska, and within the jurisdiction of this Court, on the ninth day of December, in the year of our Lord one thousand nine hundred and twenty, in and on the premises known as the Alaskan Cafe, adjoining the Alaskan Hotel on the west and being on the north side of Front Street, did, then and there, wilfully and unlawfully sell to James O'Brien for intoxicating beverage purposes intoxicating liquor, to wit, whiskey containing more than one-half of one per centum of alcohol by volume, the exact amount of said whiskey being unknown to the Grand Jurors is not herein stated.

And so the Grand Jurors duly selected, empaneled, sworn, and [3] charged as aforesaid, upon their oaths do say:

That Eluy Millicn, *alias* Charles Miller, and John Engblad did then and there commit the crime of selling intoxicating liquor, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America.

COUNT FIVE.

And the Grand Jurors of the United States of America, selected, empaneled, sworn, and charged within and for the District of Alaska, further

accuse Eluy Millicen, *alias* Charles Miller and John Engblad by this indictment of the crime of selling intoxicating liquor to a member of the military forces of the United States while in uniform, committed as follows:

The said Eluy Millich, *alias* Charles Miller, and John Engblad, at or near Juneau, within the said District of Alaska, and within the jurisdiction of this Court, on the ninth day of December, in the year of our Lord one thousand nine hundred and twenty, in and on the premises known as the Alaskan Cafe, adjoining the Alaskan Hotel on the west and being on the north side of Front Street, did, then and there, wilfully and unlawfully sell to Richard H. Gleason certain intoxicating liquor, to wit, whiskey, the said Richard H. Gleason being then and there a member of the military forces of the United States and the said Richard H. Gleason being then and there in uniform of the United States Army, in violation of Section 12 of the Selective Service Act, being the Act of Congress approved May 18, 1917.

And so the Grand Jurors duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say:

That Eluy Millich, *alias* Charles Miller, and John Engblad did then and there commit the crime of selling intoxicating liquor to a member of the military forces of the United States while in uniform, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and pro-

vided, and against the peace and dignity of the United [4] States of America.

JAMES A. SMISER,
United States Attorney. [5]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1452-B.

UNITED STATES OF AMERICA,
vs.

ELUY MILLICH, *alias* CHARLES MILLER, and
JOHN ENGBLAD.

Demurrer Overruled and Plea of Not Guilty.

Demurrer overruled. S. Hellenthal, Esquire, represents the defendants above named. Plea of Not Guilty entered. United States Attorney James A. Smiser is present on behalf of the plaintiff.

(Dated Wednesday, March 9, 1921 — Court Journal No. H, page 379.)

(Journal signed, "Jennings, District Judge.")
[6]

Filed in the District Court, District of Alaska, First Division. July 13, 1921. J. W. Bell, Clerk. By _____, Deputy.

Filed and presented this 13th of July, 1921.

ROB'T W. JENNINGS,
Judge.

In the District Court for the District of Alaska,
Division Number One.

Case No. 1452-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ELUY MILLICH, *alias* "CHARLES MILLER,"
and JOHN ENGBLAD,

Defendants.

Bill of Exceptions.

BE IT REMEMBERED that on the 21st day of March, 1921, this cause came for trial before the above-entitled court and a jury duly empanelled and sworn upon the indictment herein upon each of the counts therein contained, the defendants having filed a demurrer to each of said counts and having urged upon the hearing on said demurrer that the revenue act, and particularly section 3242, R. S., upon which count three was based, had been repealed, which said demurrer is in words and figures as follows, to wit:

"In the District Court for the District of Alaska,
Division Number One, at Juneau.

Case No. 1452-B.

UNITED STATES OF AMERICA

vs.

ELUY MILLICH, *alias* CHARLES MILLER, and
JOHN ENGBLAD,

Defendants.

Demurrer.

COMES NOW the defendants and demur to the First Count of the complaint herein for the reason that the same does not state facts sufficient to constitute a cause of action.

And further demur to Count Two of the complaint herein for the reason that the same does not state facts sufficient to constitute a cause of action.

And further demur to Count Three of the complaint herein for the reason that the same does not state facts [7] sufficient to constitute a cause of action.

And further demur to Count Four of the complaint herein for the reason that the same does not state facts sufficient to constitute a cause of action.

And further demur to Count Five of the complaint herein for the reason that the same does not state facts sufficient to constitute a cause of action.

HELLENTHAL & HELLENTHAL,

Attorneys for Defendants.

Copy received this 26th day of February, 1921.

JAMES A. SMISER,

District Attorney."

—which demurrer was overruled by the Court by an order made March 9, 1921, which order is in words and figures as follows, to wit:

Case No. 1452-B.

“UNITED STATES OF AMERICA

vs.

ELUY MILLICH, *alias* CHARLES MILLER, and
JOHN ENGBLAD.

Demurrer Overruled and Plea of Not Guilty.

Demurrer overruled. S. Hellenthal, Esquire, represents the defendants above named. Plea of Not Guilty entered. United States Attorney James A. Smiser is present on behalf of the plaintiff."

The defendants having plead not guilty, the following testimony was heard and proceedings had: [8]

Testimony of Richard H. Gleason, for the Government.

RICHARD H. GLEASON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SHAFNER.)

Q. Your name is Richard H. Gleason?

A. Richard H. Gleason.

Q. What is your occupation?

A. Telegrapher, United States Army.

Q. How long has that been your occupation?

A. The last time, May 20, 1920.

Q. Since May 20, 1920, have you been continuously a member of the United States Army?

A. I have, and I am now.

Q. Were you in the premises known as the Alaskan Cafe, next to the Alaskan Hotel, in the city of Juneau on December 9, 1920? A. I was.

Q. Who were with you there?

A. James O'Brien.

Q. What did you do when you were in there?

(Testimony of Richard H. Gleason.)

A. Purchased some drinks.

Q. What kind of drinks?

A. Supposed to be whiskey.

Q. What was it—was it whiskey?

A. To my belief and knowledge it was.

Q. Was it intoxicating? A. It was.

Q. How much did you buy?

A. I couldn't tell that.

Q. Did you buy more than one drink?

A. Yes, sir. [9]

Q. From whom did you buy them?

A. The tall fellow over there.

Q. This man sitting next to Mr. Hellenthal—on Mr. Hellenthal's right? A. Yes, sir.

Q. Where was it when you bought it?

A. Behind the bar.

Q. And you and Mr. O'Brien were on the other side of the bar? A. In front of it.

Q. What did you ask for when you went in there?

A. For a drink.

Q. How were you dressed at that time?

A. In uniform.

Q. In the uniform of the United States Army?

A. Yes, sir.

Q. Had you ever purchased any liquor there at any other time? A. No, sir.

Q. How much did you pay for it?

A. Fifty cents a drink.

Q. Can you tell us about how many drinks you had there?

A. We were in there from about 3 o'clock until

(Testimony of Richard H. Gleason.)
about 5, drinking right along.

Q. Purchasing drinks pretty steadily?

A. We were.

Q. Where did the bartender get the liquor that he served you, do you know?

A. Behind the bar,—it was poured out behind the bar,—I don't know.

Q. Did he have to go out and get it anywhere?

A. No.

Q. It was right there somewhere within reach?

[10] A. Yes, sir, it was.

Q. And Mr. Engblad was there all the time?

A. He was there part of the time.

Q. He was there all of the time or part of the time?

A. He was there at the start, and the other man was there.

Q. Mr. Miller was there? A. Yes.

Q. Were any of those drinks sold you by Mr. Miller? A. One or two rounds.

Q. It was the same kind of liquor that you testified to? A. It was.

Q. Served in the same manner? A. Yes, sir.

Q. And at the same price? A. Yes, sir.

Q. Did you buy any other liquor there—other drinks there that day? A. By the bottle.

Q. How much did you buy that way?

A. It was a pop bottle—a soda pop bottle.

Q. About how large was it?

A. I should judge about half a pint.

Q. How much did you pay for that?

(Testimony of Richard H. Gleason.)

A. I think it was \$3.50.

Q. What did that contain?

A. Supposed to contain whiskey.

Q. Was it whiskey?

A. To my knowledge it was.

Q. Was it intoxicating?

A. Well, we were drinking it all afternoon.

Q. Was it intoxicating? [11]

A. Yes, I guess,—

Mr. SHAFNER.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You went there about 3 o'clock, you say—isn't it a fact that you didn't go in there until about 4?

A. No, sir; 3 o'clock.

Q. Was Mr. O'Brien in there when you went in there? A. He was.

Q. He went in with you? A. Yes, sir.

Q. Before that time you had had some liquor?

A. Four drinks; yes, sir.

Q. Four drinks before you came in there?

A. Yes, sir.

Q. Isn't it a fact you had more than four drinks of moonshine? A. No, sir, it is not.

Q. You had four drinks of moonshine before you came in there? A. Yes, sir.

Q. And you say you came in there about 3 o'clock?

A. About 3 o'clock when we came in there.

Q. It couldn't have been as late as 5:30 when you came in there? A. No, sir; we were home then.

(Testimony of Richard H. Gleason.)

Q. And you left at 5 o'clock? A. Yes, sir.

Q. And that is the last time you were there that day? A. No—that night after supper.

Q. You were never in that place before that day?

A. I was not.

Q. And you were never in there after that day?

A. Yes, sir. [12]

Q. And you say Mr. Engblad sold you all the liquor except what Mr. Miller sold you?

A. Yes; and another man was tending bar after Mr. Miller left—I don't know what his name is.

Q. How many drinks did you say that Mr. Miller served you?

A. I don't know how many. He served us, and then Mr. Miller.

Q. You said that he served you two—one or two?

A. No, more than that.

Q. Mr. Miller served you more than two drinks?

A. Oh, no, not Miller.

Q. Was Mr. O'Brien in there with you?

A. Yes, sir.

Q. He was in the building with you?

A. Yes, sir.

Q. And drank with you?

A. He was in there with me; yes, sir.

Q. Isn't it a fact you were drunk when you came to the Alaskan? A. I was not.

Q. You were not drunk? A. I was not.

Q. The four drinks of moonshine had not had any effect? A. No, sir.

Q. They had not had any effect at all upon you?

(Testimony of Richard H. Gleason.)

A. No, sir.

Q. And you say Mr. Miller served you one or two drinks? A. Something like that.

Q. Was Mr. Miller behind the counter at that time? A. He was behind the bar; yes, sir.

Q. There is a restaurant in that place, isn't there?

A. I never seen any restaurant. [13]

Q. You didn't see any restaurant? A. No, sir.

Q. If there is a restaurant there you didn't see it? A. I didn't see no restaurant.

Q. And you say you left there about 5 o'clock?

A. Around that, yes.

Q. And during this time Mr. O'Brien had been with you all the time since he came in there?

A. He was in there; yes, sir.

Q. And he came in with you?

A. He came in with me; yes, sir.

Q. At the time you came there those four drinks you had had before had not had any effect upon you?

A. Did not.

Q. Did they have any effect upon you after you were in there?

A. We were drinking right along in there.

Q. You were drinking in there? A. Yes, sir.

Q. But the moonshine you had before that did not affect you? A. It did not.

Q. Not that you know of? A. No, sir.

Q. Have you ever been convicted of a crime?

A. Well, I was convicted up here, if you call it a crime, for being drunk and disorderly, on December 10th.

(Testimony of Richard H. Gleason.)

Q. Have you ever been convicted of a court-martial at Fort Seward?

A. That is up to the military authorities—not up to the civilian.

Q. Have you ever had any trouble—

A. I refer you to the Commanding Officer at Fort Seward.

Q. I am asking you?

A. I am not telling nothing that happened in military duty. [14]

Mr. HELLENTHAL.—I submit, your Honor, that he should answer the question.

The COURT.—Answer the question.

A. I was at a summary court—not a court-martial.

Q. You were convicted at a summary court?

A. I was at a summary court.

Q. And they convicted you?

A. I was paroled; yes.

Q. And afterwards paroled?

A. Yes, sir; after they investigated it.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

Testimony of J. O'Brien, for the Government.

J. O'BRIEN, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SHAFNER.)

Q. Mr. O'Brien, you know Mr. Gleason who just testified? A. Yes, sir, I know him.

(Testimony of J. O'Brien.)

Q. Were you with him on December 9th last?

A. Yes, sir; I believe I was with him on that day.

Q. Were you with him at the Alaskan Cafe in the city of Juneau? A. Yes, sir.

Q. That is next door to the Alaskan Hotel?

A. Yes, sir.

Q. Connected with it? A. Yes.

Q. Was any liquor purchased there while you were there?

A. We had some drinks in there—I don't know what you would call them—whether you call them liquor—I couldn't tell you. [15]

Q. What were they? A. I couldn't tell you.

Q. What did you ask for?

A. I asked for a drink, to the best of my knowledge—I think that is what I asked for.

Q. Was the liquor you got intoxicating?

A. There may have been a little kick to it.

Q. Wasn't it intoxicating as a matter of fact, Mr. O'Brien?

A. I couldn't swear it was,—I know I had several drinks in there and I wasn't drunk when I left there.

Q. You were not drunk when you left there?

A. No.

Q. Who served them? A. Mr. Engblad.

Q. What did you ask for when you bought that stuff?

A. Asked for a drink, to the best of my recollection.

(Testimony of J. O'Brien.)

Q. How was it served to you?

A. In small glasses.

Q. About how small?

A. Oh, small whiskey glasses.

Q. How much did you pay for it?

A. Four bits.

Q. A drink? A. Yes.

Q. What condition was Gleason in during this time?

A. Well, I came in there with Mr. Gleason, and we went home,—I went home with him and had dinner, and came back again, and he stayed there quite a while. I wasn't with him but part of this time he was there after supper—I don't know what happened in there during the time I was absent, of course. [16]

Q. Were you there all the time he was there before supper? A. Yes, I believe I was.

Q. What time did you go there?

A. Well, to the best of my opinion it would be around about three o'clock,—probably between 3 and 4.

Q. And you stayed how long?

A. Probably an hour and a half—I didn't pay much attention to the time,—I wouldn't be certain about the time.

Q. Did you see any more of this same kind of liquor served anywheres in that place while you were there that day, to anybody else?

A. Yes, there was others in there.

(Testimony of J. O'Brien.)

Q. They were getting the same sort of stuff, were they? A. Yes.

Q. In these small glasses? A. Yes, sir.

Q. About how many other people do you think you saw there? A. I couldn't say.

Q. As many as ten?

A. No, there wasn't ten; I don't think so.

Q. As many as half a dozen?

A. Yes, probably there might be during all that time.

Q. Yes, that is what I mean, the people there while you were in there. A. Yes.

Q. What was Gleason's condition as to sobriety when he left there with you compared to when you went in there,—was he just as sober when he left as when he went in?

A. I didn't notice much difference in him.

Q. You didn't go back with him after supper?

A. Yes.

Q. How long did you stay after supper? [17]

A. I only stayed a short time with him after supper.

Q. Was he drunk then?

A. No, he wasn't drunk; I wouldn't call him drunk.

Q. Would you say he was partly under the influence of liquor?

A. Well, after we went back after supper, yes; it was noticeable.

Q. It was noticeable then? A. Yes.

Q. From the time you got in there until you went

(Testimony of J. O'Brien.)

back you had been with Gleason all along, hadn't you?

A. From the time I left there to go home—

Q. And you and Gleason came in together in the afternoon? A. Yes.

Q. You were there with him all the time during the afternoon? A. Yes.

Q. And you went to supper with him?

A. No, sir.

Q. Didn't you go to supper with him?

A. Oh, supper—yes.

Q. You stayed with him until you got back there? A. Yes.

Q. Had he had any other intoxicating liquor during all that time—any liquor except what he bought there?

A. He had a bottle with him.

Q. Did you see where he got that?

A. Yes, he got it there.

Q. Where did he get it?

A. He got it at the Alaskan Cafe.

Q. Who sold it to him?

A. Well, I think it was Mr. Engblad.

Q. How much did he pay Engblad for it?

A. I don't know. [18]

Q. Now, from the time you went in the Alaskan Cafe with him until you left him at the Alaskan Cafe in the evening after supper, did he have any intoxicating liquor whatever except what he purchased in glasses or in a bottle at the Alaskan Cafe? A. Not as I know.

(Testimony of J. O'Brien.)

Q. You were with him all the time, weren't you?

A. Yes, until I left him after he came back.

Q. That is what I am talking about,—until you left him after he came back? A. Yes, sir.

Q. He had not had anything to drink while you were with him? A. No.

Mr. SHAFNER.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You don't know what these other half dozen people purchased at all? A. No, I don't.

Q. They may have purchased cigars?

A. Of course if they got some liquor I wouldn't know what it would be.

Q. Some purchased cigars and tobacco, did they not?

A. Yes, I believe there was some purchased cigars.

Q. And it may have been 4 o'clock when you got in there, or it may have been a little after four, Mr. O'Brien?

A. I don't think it was hardly four o'clock.

Q. You had a few drinks before you came in there? A. I did, yes.

Q. About how many did you have? A. Four.

Q. They were moonshine? [19]

A. Possibly might have been, I don't know.

Q. They may have been? A. Yes.

Q. Mr. Miller wasn't in there during any of the time you were in there?

(Testimony of J. O'Brien.)

A. Yes, he was there a while.

Q. Did he sell you any liquor?

A. He didn't sell me any liquor.

Q. Did he sell any liquor to the soldier while you were there? A. Not while I was there.

Q. Not while you were there?

A. No; he may have sold it while I wasn't there, but he didn't sell it while I was in there.

Q. Mr. Miller wasn't even behind the counter while you were there, was he?

A. To the best of my knowledge I don't think he was.

Q. Isn't it a fact he came in for some medicine, came on the other side of the counter and Mr. Engblad handed him over something, and that was the only time—

A. I know Mr. Gleason dressed Mr. Miller's neck. Mr. Miller had a sore neck at the time, and I had occasion to go to the toilet at the time and I don't know what happened in the interim, while I was away.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

GOVERNMENT RESTS.

Mr. HELLENTHAL.—I ask for a nonsuit on the count charging the sale to O'Brien.

Mr. SHAFNER.—Gleason said it was intoxicating. [20]

Mr. HELLENTHAL.—First, because there is no evidence to show that any intoxicating liquor was

sold to O'Brien on the 9th day of December, 1920.

The COURT.—Is your motion for both of the defendants?

Mr. HELLENTHAL.—The first motion is Count 4, sale to O'Brien.

The COURT.—I say is your motion on behalf of both defendants?

Mr. HELLENHTAL.—Yes, and on behalf of Mr. Miller separately.

The COURT.—The motion is denied.

DEFENSE.

Testimony of E. L. Barber, for Defendants.

E. L. BARBER, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Barber, do you know Mr. Gleason?

A. Yes, sir.

Q. Do you know his reputation for truth and veracity in this community in which he lives?

A. I should say bad.

Q. Do you know his reputation? A. Yes, sir.

Q. What is that reputation—good or bad?

Mr. SMISER.—I would like to test his knowledge a little before he answers that question.

(Questions by Mr. SMISER.)

Q. How long have you been in this community, Mr. Barber?

(Testimony of E. L. Barber.)

A. I have been in this community since last April,—no, May—last May.

Q. Do you associate around generally with people, or does your business confine you pretty closely?

A. No; I associate around pretty much, don't go to dances or anything like that, but I seen pretty much of him at that time. [21]

Q. How long have you known Mr. Gleason?

A. Since last,—let's see—I have known him since he came up here—I don't know exactly when he came up.

Q. The latter part of October—the middle or latter part of October.

A. No, no; it was before that,—I think it was last summer some time.

Q. Were you on the same shift with him in the office?

A. Well, most of the time I wasn't. He was on day shift and I was on night shift mostly.

Q. And most of the time you did not associate with him at all, did you?

A. Well, I have been around with him.

Q. What?

A. I knew him in the office—associated with him in the office.

Q. But most of the time you were on night shift and he was on day shift?

A. Yes, sir; most of the time.

Q. Now, about the only association you had with him was when you and he would go out together and get something to drink, wasn't it?

(Testimony of E. L. Barber.)

A. Did that once.

Q. Were you in the habit of getting tight frequently? A. No, sir, I am not.

Q. Recently, haven't you been drunk?

A. No, sir,—what do you mean by recently?

Q. In the last month or two? A. No, sir.

Mr. HELLENTHAL.—I object to that—he should not go any further with the witness—it is not fair to him. [22]

Q. Who did you ever hear discussing Gleason's reputation prior to the time that he swore that he had bought whiskey here from a lot of bootleggers?

A. Well, I heard lots of people around town,—I couldn't mention any names, or anything, because I don't know exactly. I know his reputation around town here just judging from the general talk of the public.

Q. Whom around town have you heard speaking about it?

A. Oh, do I have to answer that?

Q. Yes.

A. I don't care to get others mixed up.

Q. Answer it.

A. I have heard Sergeant Wardell.

Q. He is one of the men in the office there?

A. He is.

Q. Who else?

A. I have heard others but I don't remember who it was.

Q. You don't remember any other men you heard discussing him?

(Testimony of E. L. Barber.)

A. No, sir, I don't remember who it was, but I have heard it.

Q. Did you ever have occasion to discuss Gleason's reputation around town at all until this prosecution of the bootleggers came up? A. Yes, I have.

Q. Well, who? A. Who?

Q. Yes.

A. You asked me if I ever had any occasion—

Q. Yes, who did you have occasion to discuss his reputation with?

A. That comes under military authority,—do I have to answer stuff that comes under that? [23]

Q. That was with the military authorities?

A. Yes, sir.

Q. But you have never heard it discussed by any citizens?

A. I have heard citizens—I cannot remember everything.

Q. They were bootleggers that you have been running with, weren't they?

A. They were bootleggers that I have been running with?

Q. Don't you run with the bootleggers?

A. No, sir; I do not.

Q. Haven't you appeared here for bootlegging?

A. I have appeared for the Government—the subpoena will show that.

Q. Weren't you used by the defendant, as a witness for the defendant, in other liquor cases?

A. Well, let's see now. On the last subpoena it said Government witness.

(Testimony of E. L. Barber.)

Q. I am not talking about the subpoenae—I am talking about your getting on the witness stand and swearing for the defendants.

A. The last time I was here I was asked to go on the stand for the defendant.

Q. For one of those men that was convicted of selling liquor?

A. Well, the lawyer asked me to go on.

Q. I know the lawyer asked you—don't dodge the question. You know that you got on the stand on behalf of the man that was convicted, don't you?

A. I come up here and I answered the questions he asked me—I never had no previous arrangement with him.

Q. On behalf of the man who was convicted of selling liquor?

A. You can call it that if you want to.

Q. What would you call it,—isn't that a fact?

A. I don't know, he asked me to come up here.

[24]

Q. Who?

A. Whoever it was—whoever was the defense.

Q. You knew the men that were running the Kentucky saloon, didn't you?

A. No, sir, I did not.

Q. You know Abatte and Stragier?

A. I know them to speak to them on the street, after I met them on the last trial.

Q. You were in there and got drinks?

Mr. HELLENTHAL.—Your Honor, please; these questions are asked out of order,—he was only to

(Testimony of E. L. Barber.)

ask sufficient questions to find out whether the man's reputation is good or bad.

Mr. SMISER.—I am trying to find out something about him—and how he got his information.

Q. You know these fellows had been running the Old Stand?

A. I didn't know anything about it until after this trial came up.

Q. And after this trial came up you were in there and bought drinks, too, weren't you?

A. No, sir.

Mr. HELLENTHAL.—I object to that.

The COURT.—I think the point is well taken—you cannot cross-examine him now.

Q. Now, the officer that you named that was in the service—the telegraph service, was the only one you ever remember of hearing say anything about Gleason's reputation?

Mr. HELLENTHAL.—I object to that—he didn't so testify. He testified that he heard lots of others.

The COURT.—He may ask him again.

Q. Is he the only one that you remember?

A. That is the only one I remember, yes, sir.

Q. You cannot remember a single other person that you heard say [25] that?

A. I cannot remember their names.

Q. Until Gleason appeared as a witness against these bootleggers you never heard his reputation discussed at all, did you? A. Of course I did.

Q. Whom did you hear discuss it?

(Testimony of E. L. Barber.)

A. I have heard it down around the office.

Q. Before he became a witness against these bootleggers? A. Yes, sir.

Q. You never told anybody that before he was examined as a witness, did you?

A. I never had no cause to tell any one—it wasn't my business.

Q. Never had any cause to tell it? A. No.

Q. You had only known Gleason since late in the summer, hadn't you? A. Yes, I think so.

Q. And you only heard one man speak of his reputation?

A. Oh, I have heard others but I cannot remember who they were.

Q. You remember of having heard only the one?

A. Yes.

Q. These others you heard speak of him, were they connected with the telegraph service or were they citizens of the town?

A. They were citizens of the town.

Q. Were they bootlegging citizens?

A. Not that I know of—I don't know bootlegging citizens—I haven't any reason to associate with them.

Q. You say you don't know bootlegging citizens, —don't you know the proprietor of the Kentucky place?

Mr. HELLENTHAL.—We object to that.

The COURT.—You cannot cross-examine him on things you bring out yourself. [26]

Mr. SMISER.—All right.

(Testimony of E. L. Barber.)

Q. You have been in the old Kentucky, haven't you? A. I have not.

Q. You have been in the New York?

Mr. HELLENTHAL.—I object to that.

The COURT.—After he has finished his direct examination you can cross-examine him, Mr. Smiser, to your heart's content.

Mr. SMISER.—That is all.

(Questions by Mr. HELLENTHAL.)

Q. Mr. Barber, is his reputation good or bad?

A. Well, I should say bad.

Q. Do you know these defendants, Mr. Barber?

A. No, sir, only Mr. Engblad—I know him as an acquaintance to meet on the street and that is all.

Q. That is all? A. Yes, sir.

Q. You testified here as you have testified for anybody that wanted you to tell what you knew?

A. Yes, sir; I was subpoenaed—I had to come.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Mr. SMISER.)

Q. Now, I repeat my question to you. You have been in the habit of patronizing these bootlegging places, have you not? A. No, sir.

Mr. HELLENTHAL.—I object to that as not cross-examination.

The COURT.—Overruled.

Q. Haven't these bootleggers been associates of yours, and friends? A. No, sir. [27]

Q. When they got into trouble didn't they call

(Testimony of E. L. Barber.)

on you because they knew you would come up and testify for them?

A. If they did they did it without my knowledge,—I came up because I was subpoenaed. If I didn't come I would be fined for contempt of court.

Q. Hadn't you talked with them before you were subpoenaed?

A. No, sir, not before I was subpoenaed the first time on that other hearing.

Q. You hadn't talked with them at all?

A. Not that I remember.

Q. How did they know then that you would swear that you would not believe Gleason?

A. I don't know how they knew it,—that isn't any of my business, how they knew it.

Q. They found that out by some secret process as far as you know?

A. Yes, sir; maybe a little bird told them.

Q. Weren't you the little bird that told them?

A. No, sir.

Q. Didn't they give you a drink for testifying?

A. No, sir.

Q. Didn't you go with Gleason on one occasion and get drunk in the Old Stand?

A. Well, I believe that has already been brought out, and I admit that I did.

Q. I want to bring it out now,—you did?

Mr. HELLENTHAL.—I object to that as now cross-examination.

The COURT.—Overruled.

Q. Now, I will ask you if it wasn't in the case

(Testimony of E. L. Barber.)

against the men who were running that Old Stand, where Gleason had testified that he bought liquor from them, that you testified first [28] against Gleason's reputation,—wasn't that the first case?

A. I believe I did.

Q. And yet you had been in there yourself and bought liquor with Gleason and knew that what Gleason swore to was true?

A. Who said I bought liquor?

Q. Didn't you say so?

A. No, sir; I didn't—I said I didn't know what I bought.

Q. Oh, you didn't know what you bought?

A. I did not.

Q. You bought a drink in a little glass?

A. Yes.

Q. You don't know what it was?

A. I don't know what it was.

Q. You paid four bits for it?

A. Well, as I remember, I think it was four bits.

Q. And yet you were willing to swear to the jury that you did not know what it was, and you are willing to swear against Gleason because he swore it was liquor?

A. I am not swearing against Gleason because he swore it was anything—it is none of my business what Gleason swore to.

Mr. SMISER.—That is all.

(Witness excused.) [29]

Testimony of Gerald O. Dwyer, for Defendant.

GERALD O. DWYER, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Jerry Dwyer?

A. Gerald O. Dwyer.

Q. Do you know Richard H. Gleason?

A. I do.

Q. Do you know his general reputation in this community for truth and veracity?

A. I know him in a business way.

Q. Do you know his reputation for truth and veracity generally? A. Yes, in a business way.

Mr. SHAFNER.—You know what reputation is—it is what other people say about him.

The WITNESS.—Yes, sir.

Q. (By Mr. HELLENTHAL.) What is the reputation, good or bad?

A. Bad, I would say.

Q. Mr. Dwyer, were you around the Alaskan Hotel on the 9th day of December, 1920?

A. Yes, sir.

Q. Did you notice Richard H. Gleason there, and James O'Brien?

A. I noticed Mr. Gleason—I didn't notice Mr. O'Brien.

Q. What time of day was that?

A. It was between 3:30 and 4 o'clock.

(Testimony of Gerald O. Dwyer.)

Q. Where was Gleason at that time?

A. In the Alaskan Cafe—he was standing in the Alaskan Cafe.

Q. What was his condition at that time as to whether he was drunk or sober?

A. Well, I was looking for a man, and when I came in he called to me— [30]

Mr. SHAFFNER.—Just answer the question.

A. I would say he was drunk.

Q. How drunk was he—describe that to the jury.

A. He called to me and said, "Come here, come here,"—I was busy and I didn't have any time much to judge him, but I would judge he was pretty drunk, so I didn't stop at all—I just beat it right along.

Mr. HELLENTHAL.—That is all—you may cross-examine.

Cross-examination.

(By Mr. SHAFFNER.)

Q. What is your occupation?

A. Bookkeeping.

Q. For whom? A. Alaska Daily Empire.

Q. How long were you around at the Alaskan that day?

A. Well when I came in there,—I was only there for probably 5 minutes—just in and out.

Q. Gleason was standing at the bar, wasn't he?

A. Yes, sir.

Q. Did he have a glass in front of him?

A. I didn't notice.

(Testimony of Gerald O. Dwyer.)

Q. Was there anybody with him?

A. I didn't even notice that, but he called to me.

Q. And he was pretty drunk?

A. That is the way I would judge from the way he was talking.

Q. Did you see either of these defendants there?

A. I seen one,—I don't remember which one was on shift.

Q. You have seen both of them on shift at various times, haven't you? A. Yes.

Q. Have you seen Mr. Miller behind the bar there? A. Yes. [31]

Q. Frequently? A. Not frequently.

Q. Saw them before December 9th and after, both?

A. Yes; I saw them before December 9th and after.

Mr. SHAFFNER.—That is all.

Redirect Examination.

(By. Mr. HELLENTHAL.)

Q. Do you remember when Mr. Miller had a boil on his neck? A. Yes, sir.

Q. Do you know whether or not he ever was on shift during that time?

A. Well, I don't know whether he was or not—I don't believe he was—he was sick at that time—he had a couple of boils on his neck.

Q. Do you know whether that was about the first of December or not?

A. It was about the 1st of December.

Mr. HELLENTHAL.—That is all.

(Testimony of Gerald O. Dwyer.)

Recross-examination.

(By Mr. SHAFFNER.)

Q. How often do you go in there?

A. Well, I room there—I go in pretty often.

Q. You room upstairs?

A. Yes, sir, some of the time—not all of the time—part of the time.

Q. You know both of these defendants pretty well?

A. Yes, sir; have a speaking acquaintance,—yes, I know them pretty well.

Mr. SHAFFNER.—That is all.

(Witness excused.)

Testimony of James McCloskey, for Defendants.

JAMES McCLOSKEY, called as a witness on behalf of the defendants, being first duly sworn, testified as follows: [32]

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is James McCloskey? A. Yes.

Q. Do you know Richard H. Gleason?

A. Yes, sir.

Q. Did you see Mr. Gleason at any time on December 9th last? A. I did.

Q. About what time did you see him on that day?

A. It was about 4 o'clock in the afternoon.

Q. Where did you see him?

A. In the hotel lobby.

Q. Did you observe his condition at that time,

(Testimony of James McCloskey.)

whether he was drunk or sober? A. I did.

Q. What was his condition?

A. He was, I would judge, intoxicated.

Q. How intoxicated was he?

A. Well, I didn't stay very long with him—he says, "Come on and have a drink," and I went and took a cigar and I beat it.

Q. You had a cigar with him at that time?

A. Yes, sir.

Q. Did you see him again during that day?

A. No.

Mr. HELLENTHAL.—That is all.

Cross-examination.

(By Mr. SHAFNER.)

Q. Where did he take you when he said "Come and have a drink"?

A. Took me into the cafe.

Q. That is the place that Miller runs? A. Yes.

Mr. SHAFNER.—That is all. [33]

Q. (By Mr. HELLENTHAL.) Was there any intoxicating liquor served to Mr. Gleason while you were with him?

A. I didn't stay very long—I don't know whether there was or not.

Q. (By Mr. HELLENTHAL.) Did he drink any?

A. I don't know what he took.

Q. (By Mr. HELLENTHAL.) Don't know what he took? A. No.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

Testimony of Charles Miller, in His Own Behalf.

CHARLES MILLER, one of the defendants, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. What is your name? A. Eluy Millich.

Q. They frequently call you Charles Miller?

A. Yes, that is my name.

Q. How do they happen to call you Charles Miller?

A. Millich is hard to say, and they call me Miller.

Q. What is your nationality?

A. Montenegrant.

Q. How long have you been in Juneau?

A. About 5 years—four or five years.

Q. You have heard the testimony here of Mr. Gleason? A. Yes, sir.

Q. Did you sell Mr. Gleason anything of any kind on December 9th? A. No, sir.

Q. On that day you remember seeing Mr. Gleason in your place of business? [34]

A. I don't remember—I saw a soldier, I remember, but I don't remember whether it was him or somebody else.

Q. You remember seeing a soldier there?

A. I got up around 4 o'clock, and I went to the garage to take the car out, and I didn't stay two minutes.

(Testimony of Charles Miller.)

Q. Did you serve anybody any intoxicating liquor— A. No, sir.

Q. Or anything else, behind the counter?

A. No, sir, I did not.

Q. Did you go behind the counter that day?

A. No, sir, I didn't work that day at all.

Q. Did you go into the place at all?

A. Yes, sir, some times I go into the place.

Q. When did you go into the place?

A. I got up about 4 o'clock, and I go down to the garage to get the car out—I had boils on my neck, so I went down to the car.

Q. That is your place there? A. Yes, sir.

Q. Do you keep any intoxicating liquor there?

A. No, sir.

Q. Keep any for sale? A. No, sir.

Q. Is there any kept there with your knowledge?

A. Not that I know.

Q. Either that day or any other day?

A. Not that I know.

Q. You say you did see a soldier in there that day? A. I did see a soldier; yes, sir.

Q. Did you see Mr. O'Brien there at that time?

A. I don't remember—I didn't know him. [35]

Mr. HELLENTHAL.—That is all—you may cross-examine.

Cross-examination.

(By Mr. SHAFFNER.)

Q. I understand you are the proprietor of this place? A. Yes, sir.

(Testimony of Charles Miller.)

Q. Named the Alaskan Cafe. How long have you been proprietor of that?

A. I don't remember exactly—four or five months.

Q. And still are? A. Yes, sir.

Q. Mr. Engblad, what does he do?

A. Work for me.

Q. How long has he worked for you?

A. Worked for me since a month after I opened up the place.

Q. Did he work for you before December 9th?

A. Yes, sir.

Q. And he works for you now? A. Yes, sir.

Q. And ordinarily, except, for instance, this time you had boils, you work behind the bar sometimes yourself?

A. Ten or fifteen days after I opened up the place I worked there, that is all.

Mr. SHAFFNER.—That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. You say you have worked 10 or 15 days since you have had the place? A. Yes.

Q. You seldom go behind the counter at all?

A. No. [36]

Q. And you have run that place for four or five months?

A. I don't remember—four, five or six months.

Q. What do you sell there?

A. Soft drinks, cigars and tobacco, and a lunch counter and restaurant.

(Testimony of Charles Miller.)

Q. Was there a lunch counter and restaurant in there on the 9th day of December? A. Yes, sir.

Q. Who was running that at that time?

A. A fellow—I don't know his last name—Dick. Mr. HELLENTHAL.—That is all.

Q. (By Mr. SHAFFNER.) Do you remember the preliminary examination in this case before the Commissioner? You were there, weren't you?

A. Yes, sir.

Q. (By Mr. SHAFFNER.) You heard Gleason testify there? A. Yes, sir.

Q. (By Mr. SHAFFNER.) And you heard O'Brien testify there, and you heard them both testify that Mr. Engblad had sold them some drinks?

Mr. HELLENTHAL.—I object to that.

The COURT.—Objection sustained.

Mr. SHAFFNER.—That is all.

(Witness is excused.)

Testimony of A. J. Millingson, for Defendant.

A. J. MILLINGSON, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is A. J. Millingson?

A. Yes, sir.

Q. You are employed at the cable office? [37]

A. Yes, sir.

Q. Do you know Richard H. Gleason?

A. Yes, sir.

(Testimony of A. J. Millingson.)

Q. Do you know his general reputation for truth and veracity in this community?

A. Well, the general opinion of the boys down there that know it.

Mr. SMISER.—I object to any testimony at the cable office.

The COURT.—General reputation means what the people generally that he associates with, what they say.

A. Those that I have heard speak about him—

The COURT.—Do you know what they generally say about him? A. Yes, sir.

Q. (By Mr. HELLENTHAL.) What is that reputation—good or bad? A. It is not good.

Mr. HELLENTHAL.—That is all.

Cross-examination.

(By Mr. SMISER.)

Q. You never did hear this man's reputation discussed at all until he appeared as a witness in these bootlegging cases here? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. Who did you hear discuss it?

A. Well, I cannot think of his name—he is over at Sitka—he seemed to know Mr. Gleason and told about his reputation.

Q. He was in the cable office?

A. He is in the cable office there, yes, sir—is now.

Q. You heard him discussing Gleason?

A. Over the wire—not verbally, but over the wire. [38]

(Testimony of A. J. Millingson.)

Q. Who else did you hear discuss it?

A. Do I have to tell?

Q. Yes.

Mr. HELLENTHAL.—If you remember.

A. I would rather not speak of some of them.

Q. What did you say?

A. I would rather not, if I can help it.

Q. Were they in the cable office? A. Yes, sir.

Q. How many of them did you hear discuss it?

A. Well, quite a few of them, and even one from Haines, Lieutenant —, and Mr. Cohoe, an attorney, also from Haines.

Q. Did you ever hear anybody else except these officers that you speak of that are in the cable office?

A. Well, I heard Mr. Bartlett—he said that he wouldn't believe him—from the Gastineau.

Q. Who is that? A. Mr. Bartlett.

Q. Mr. Bartlett from the Alaskan Hotel?

A. From the Gastineau Hotel.

Q. Anybody else?

A. Yes, quite a number that I don't know their names.

Q. Now, as a matter of fact Gleason was drinking a good deal about the time of the original arrests, wasn't he?

A. Well, I don't know—I cannot always tell whether a person is or not.

Q. You were drinking some, too, about that time, weren't you?

A. I brought some whiskey down with me when I left Haines—yes, sir, I did.

(Testimony of A. J. Millingson.)

Q. And on several occasions you were pretty full?

A. Only that one time that I know of. [39]

Q. You appeared here as a witness the other day in a case—in a similar case?

A. Yes, sir; I said I didn't buy here, but I did bring it down with me, yes, sir—since you are asking me I will tell you.

Q. You were pretty full that evening, weren't you?

A. I think I must have been because I didn't work that day.

Q. You were too full to work?

A. I think I was; yes, sir.

Q. Now, as a matter of fact, wasn't it the custom of yourself and Gleason and nearly all of the boys down there to go into these bootlegging places.

A. No, sir.

Q. And drink? A. No, sir—not with me.

Q. Don't you go in there frequently?

A. No, sir.

Q. In the Old Kentucky?

A. Not to drink anything. I have stopped in there and got my tobacco—I smoke all the time.

Q. The Mecca? A. No, sir.

Q. The Old Stand? A. No, sir.

Q. You have been drunk three nights this last week, haven't you? A. I have been?

Q. Yes.

A. Well, I don't know—I don't think so. I have been working right along except Saturday, when I

(Testimony of A. J. Millingson.)

got my inoculation and the doctor ordered me not to work.

Q. Off duty hours, when you were off duty, you were drunk? [40]

A. No, sir. Ask Dr. Sloane if I was. I took my inoculation Saturday and he ordered me not to work, and I didn't—I went to my room.

Mr. SMISER.—That is all.

(Witness excused.)

Testimony of Dick Roberts, for Defendants.

DICK ROBERTS, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Roberts, do you know the witness Gleason? A. I know him by sight.

Q. Did you see anything of him on the 9th day of December last past? A. I did.

Q. Where were you at the time that you saw him?

A. Alaskan Cafe.

Q. Were you there when he first came in?

A. Yes, sir.

Q. At what time was that?

A. About 4 o'clock in the afternoon.

Q. Did you observe his condition then as to whether he was drunk or sober? A. I did.

Q. What was he—drunk or sober? A. Drunk.

Q. Did you observe Mr. Miller come in there at any of the time you were there?

(Testimony of Dick Roberts.)

A. Not just then he didn't.

Q. How long did you stay there after Gleason came in? A. About 5 minutes—3 or 4 minutes.

[41]

Q. What business was conducted in that place at that time?

A. Soft drinks, cigars and tobacco, and a restaurant.

Mr. HELLENTHAL.—That is all—you may cross-examine.

Cross-examination.

(By Mr. SHAFFNER.)

Q. What is your business, Mr. Roberts?

A. I am a cook.

Q. Where? A. At the Alaska Grill.

Q. Just what is it that recalls December 9th to your mind?

A. It was just a few days after I came over from Sitka, and I know Mr. _____ and I went in there to talk to him about opening up the restaurant there, and I happened to be there on December 9th when the soldier came in there.

Q. There wasn't anything about a soldier coming in there that marked it on your mind?

A. It looked kind of funny to see a soldier drunk, yes.

Q. What time did you come here?

A. On the 5th.

Q. Where do you live here? A. On 4th Street.

Q. How long were you in that place altogether that day?

(Testimony of Dick Roberts.)

A. At that time the soldier came in I was there about 10 minutes, then I went in and opened up the restaurant that night.

Q. You began to work in there?

A. Yes; I started to work in the restaurant that same evening.

Q. How long did you stay working for them?

A. About one month. [42]

Mr. SHAFFNER.—That is all.

(Witness excused.)

Testimony of John Engblad, in His Own Behalf.

JOHN ENGBLAD, one of the defendants called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Engblad, you have heard the testimony in this case? A. Yes, sir.

Q. Heard the testimony of Gleason?

A. Yes, sir.

Q. You were working for Charley Miller on the 9th day of December? A. Yes, sir.

Q. Did you, during the 9th day of December, sell any intoxicating liquor to Mr. Gleason?

A. No, sir.

Q. At any time during that day? A. No, sir.

Q. Did you ever sell him any intoxicating liquor?

A. No, sir.

(Testimony of John Engblad.)

Q. Did you sell Mr. O'Brien any intoxicating liquor that day? A. No, sir.

Q. Did you ever sell Mr. O'Brien any intoxicating liquor? A. No, sir.

Q. Did you sell Mr. Gleason a bottle on that day of any kind or description? A. No kind of bottle.

Q. You were working there for Mr. Miller? [43]

A. Yes, sir.

Q. Where were you when Mr. Gleason first came in there?

A. I was sitting down there in a big chair just inside of the partition—a chair something like this—talking to Mr. Roberts.

Q. That is the man who just testified?

A. Yes, sir.

Q. What was Mr. Gleason's condition at that time? A. He appeared to be drunk.

Q. How long did Mr. Gleason stay there?

A. Well, I cannot say positively because there was fellows coming in and going out and I would be talking to different ones—didn't pay much attention to him all the time—he was talking to everybody that came in.

Q. About how long would you say?

A. Possibly an hour.

Q. Did you have any intoxicating liquor in the place of business on that day? A. No, sir.

Mr. HELLENTHAL.—You may cross-examine the witness.

(Testimony of John Engblad.)

Cross-examination.

(By Mr. SHAFFNER.)

Q. You say he was there about an hour in the afternoon?

A. Well, I think it was about an hour—might have been a little less or a little more.

Q. He was drunk?

A. Yes, sir—he appeared to be.

Q. Drunk when he came in?

A. Yes, sir—staggered.

Q. You noticed it right away? [44]

A. Mr. Roberts made the remark to me, he said, "That fellow has got a jag on."

Q. Right after that you noticed it?

A. Sure; he jumped up against the wall—up against the counter.

Q. Then he came back in the evening again, did he? A. I wasn't there in the evening.

Q. You were not there in the evening?

A. No, sir.

Q. Who was on duty in the evening?

A. Mr. Baker.

Mr. SHAFFNER.—That is all.

(Witness excused.)

Testimony of Walter Johnson, for Defendants.

WALTER JOHNSON, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Walter Johnson?

A. Yes, sir.

Q. Do you know Richard H. Gleason?

A. Yes, sir.

Q. Did you know him in Haines? A. Yes, sir.

Q. And you knew him in Juneau? A. Yes, sir.

Q. Do you know his general reputation in this community for truth and veracity? A. I do.

Q. What is that reputation—good or bad? [45]

A. It is bad—very bad.

Mr. HELLENTHAL.—You may cross-examine the witness.

Mr. SCHAFNER.—No questions.

(Witness excused.)

Testimony of Charles Miller, in His Own Behalf (Recalled).

CHARLES MILLER, recalled as a witness in his own behalf, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Who was your night man on December 9th?

A. Baker.

Q. Where is Baker now? A. I don't know.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

DEFENDANTS REST.

Whereupon the defendants moved that the Court instruct the jury to return a verdict in favor of the defendants on Count Three of the indictment for the reason that the law has been repealed on which said Count was based, and further moved the Court that the plaintiff be required to elect between Counts Two and Count Five of the indictment. Whereafter the Court denied the defendants' request for an instructed verdict as to Count Three, to which ruling the defendants excepted and an exception was allowed and the Court instructed the jury to find the defendants not guilty as to Count Five.

The jury was charged and retired and

Thereafter the jury returned a verdict finding the defendants not guilty as to Counts Two and Four and guilty as to Counts One and Three; to which verdict the defendants did then and there object for the reasons: That the verdict of guilty on Counts One and Three was not supported by any evidence and was against the law; which said verdict is in words and figures as follows, to wit:

[46]

“In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1452-B.

UNITED STATES OF AMERICA
vs.

ELUY MILLICH, *alias* CHARLES MILLER, and
JOHN ENGBLAD.

Verdict.

We, the jury empanelled and sworn in the above-entitled cause, do find as follows:

As to the defendant Eluy Millich, *alias* Charles Miller: We find him guilty as charged in the indictment. We find him guilty on Counts Nos. 1 and 3 and not guilty on Counts Nos. 2 and 4 of the indictment.

As to the defendant John Engblad: We find him guilty as charged in the indictment. We find him guilty on Counts Nos. 1 and 3, and not guilty on Counts Nos. 2 and 4 of the indictment.

A. J. SPRAGUE,
Foreman.”

whereupon and within the time provided by law, the defendants filed the following motions for judgment notwithstanding the verdict and a motion for a new trial, which said motions are in words and figures as follows, to wit:

“In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1452-B.

UNITED STATES OF AMERICA
vs.

ELUY MILLICH, *alias* ‘CHARLES MILLER,’
and JOHN ENGBLAD.

**Motion in Arrest of Judgment Notwithstanding the
Verdict.**

Come now the defendants and respectively move
the Court that the defendants have judgment on
the verdict of guilty on Count Four of the Indict-
ment herein; for the reason that the allegations set
forth in said count and the [47] facts stated
do not constitute a crime.

HELLENTHAL & HELLENTHAL,
Attorneys for Defendants.

Copy received and service admitted.

JAMES A. SMISER,
District Attorney.”

“In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1452-B.

UNITED STATES OF AMERICA
vs.

ELUY MILLICH, *alias* ‘CHARLES MILLER,’
and JOHN ENGBLAD.

Motion for Judgment Notwithstanding the Verdict.

Come now the defendants and move for judgment of not guilty upon the verdict of the jury, returned in the above-entitled cause, on Counts one and three of the indictment herein, for the reason: That the defendants were found not guilty on Counts Two and Four of the indictment herein; that the only evidence, if any, that would sustain conviction on Counts One and Three was the evidence of sales set forth in Counts Two and Four.

HELLENTHAL & HELLENTHAL,
Attorneys for Defendants.

Copy received and service admitted.

J. A. SMISER,
District Attorney."

"In the District Court for the District of Alaska,
Division Number One, at Juneau.

Case No. 1452-B.

THE UNITED STATES OF AMERICA
vs.

ELUY MILLICH, *alias* 'CHARLES MILLER,'
and JOHN ENGBLAD.

Motion for New Trial.

Come now the defendants and move for new [48] trial on Counts One and Three of the indictment herein, upon the following grounds:

Insufficiency of evidence to justify the verdict

against the defendants, or either one of them, on Counts One and Three of the indictment herein.

Errors of law occurring at the trial and excepted to by the defense; and particularly error in overruling of the demurrer to Count Four of the indictment herein; in refusing to grant defendant's motion that no evidence be received in the above-entitled case, until the plaintiff elect between Count Three and the remainder, for the reason that a felony and misdemeanor had been improperly united in the indictment.

Irregularity of the jury in finding the defendants guilty on Counts One and Three, while they had found them not guilty on Counts Two and Four; since the only evidence offered as to the guilt of the defendants on Counts One and Three was the sales of liquor made, as alleged in Counts Two and Four, of which the defendants were found not guilty.

HELLENTHAL & HELLENTHAL,
Attorneys for Defendants.

Copy received and service admitted.

JAMES A. SMISER." [49]

All of which said motions were overruled by the Court, to which ruling and to the ruling on each motion the defendants then and there excepted, and an exception was allowed them to the ruling on each of said motions by the Court.

In the District Court for the District of Alaska.
Division Number One.

Case No. 1452-B.

UNITED STATES OF AMERICA
vs.

ELUY MILLICH, *alias* "CHARLES MILLER,"
and JOHN ENGBLAD.

Order: Allowing and Settling Bill of Exceptions.

I, Thomas M. Reed, Judge of the above-entitled court, successor to Robert W. Jennings who presided at the trial of the above-entitled cause, DO CERTIFY that on the 12th day of Dec. 1921, within the time allowed by this Court, the defendants present to this Court, after due notice having been served upon the United States Attorney for the District of Alaska, Division Number One, this their bill of exceptions herein and pray that the same be allowed, filed and made a part of the record in this case; and I having examined the same and being fully advised in the premises do allow and settle the same as a true and correct bill of exceptions; and I do FURTHER CERTIFY that the same contains all the evidence heard at the trial, and do order the same to be made a part of the record herein.

THOS. M. REED.

J. D. C.

Dated this 12th of Dec., 1912.

Filed in the District Court, District of Alaska,
First Division. Dec. 12, 1921. John H. Dunn,
Clerk. By L. E. Spray, Deputy. [50]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1452-B.

THE UNITED STATES OF AMERICA
vs.

ELUY MILLICH, *alias* CHARLES MILLER,
Defendant.

Judgment and Sentence.

The above-entitled cause comes duly on at this time for the imposition of sentence upon the above-named defendant, Charles Miller, on the verdict of the jury heretofore, to wit, on March 22, 1921, rendered herein, which said verdict found the defendant guilty as to Counts 1 and 3 as charged in the indictment, for the violation of Alaska Bone Dry Law (illegal possession of intoxicating liquor), and sec. 3242, R. S. Defendant is present in court and is represented by his attorney, S. Hellenthal, Esquire. James A. Smiser is present on behalf of the plaintiff. Thereupon the defendant is asked if he has any reason to offer why sentence should not now be imposed upon him, to which he does not offer any sufficient or valid reason.

It is, therefore, the JUDGMENT of the Court that said defendant, Charles Miller, is guilty of the violation of Alaska Bone Dry Law (illegal possession of intoxicating liquor), and sec. 3242, R. S., and it is the Sentence of the Court that said defendant, Charles Miller, be fined \$800.00 and con-

fined in the United States Federal Jail, at Juneau, Alaska, for a period of three (3) months. Stay of execution on presentation of bond in the sum of \$2000.00; for sixty (60) days, and that he stand committed until said sentence is fully executed.

Done in open court this 11th day of May, A. D. 1921.

ROBERT W. JENNINGS,
District Judge.

Entered Court Journal No. 1, Page 68.

Filed in the District Court, District of Alaska, First Division. May 11, 1921. J. W. Bell, Clerk. By V. F. Pugh, Deputy. [51]

In the District Court for the District of Alaska, Division Number One, at Juneau.

Case No. 1452-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ELUY MILLICH, *alias* "CHARLES MILLER,"
and JOHN ENGBLAD,

Defendants.

Petition for Writ of Error.

To the Honorable ROBERT W. JENNINGS,
Judge of the Above-entitled Court:

The above-named defendants feeling themselves aggrieved by the verdict of the jury rendered herein

and the judgments and sentences thereon rendered on May 11, 1921, whereby the defendant Eluy Millich was adjudged guilty of the crimes charged in Counts One and Three of the indictment and sentenced to serve a term of three months in the Federal Jail at Juneau, Alaska, and pay a fine of Eight Hundred Dollars (\$800.00), and whereby the defendant, John Engblad, was adjudged guilty of the crimes charged in Counts One and Three of the indictment herein and sentenced to serve a term of three months in the Federal Jail at Juneau, Alaska:

'COME NOW the said defendants and petition this Honorable Court for an order allowing said defendants to prosecute a writ of error in and to the United States Circuit Court of Appeals for the Ninth Circuit under and according to the law in such cases made and provided; also that an order be made staying proceedings and execution in such case until a further order of the Court of Appeals and pending the prosecution of said writ of error.

HELLENTHAL & HELLENTHAL,

Attorneys for Defendants.

Due service of a copy of the foregoing and within petition for writ of error is admitted this 12th day of July, 1921.

WALTER SCHAFFNER,

Asst. United States District Attorney.

The foregoing writ of error allowed and the amount of the supersedeas bond continued as previously fixed,—\$1,000 for John Engblad [52] and \$2,000 for Eluy Millich.

Dated this 13th day of July, 1921.

ROBERT W. JENNINGS,
Judge.

Entered Court Journal No. 4, page 374, at Ketchikan.

Filed in the District Court, District of Alaska,
First Division. July 13, 1921. J. W. Bell, Clerk.
By _____, Deputy. [53]

O. K. as to form.

JAMES A. SMISER,
U. S. Atty.

In the District Court for the District of Alaska,
Division Number One, at Juneau.

Case No. 1452-B.

UNITED STATES OF AMERICA

vs.

ELUY MILLICH, *alias* CHARLES MILLER,
and JOHN ENGBLAD.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS: That we, Eluy Millich, one of the above-named defendants, as principal, and James McCloskey and John Newman, as sureties, are held and firmly bound unto the United States of America in the penal sum of Two Thousand Dollars (\$2,000.00), for which payment well and truly to be made we bind ourselves and each of us, our heirs, and each of

our heirs, executors and administrators firmly by these presents.

THE CONDITION of the above obligation is such that whereas the above-named principal and defendant, Eluy Millich, is about to sue out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment in the above-entitled case rendered by the District Court of the District or Territory of Alaska, Division Number One, and entered and made on May 11th, 1921, whereby and by the terms of which the said Eluy Millich was sentenced to serve three months in the Federal Jail at Juneau, Alaska, and pay a fine in addition thereto of \$800 for the crimes mentioned in said judgment and sentence;

NOW, THEREFORE, the conditions of this obligation are such that the said defendant Eluy Millich shall prosecute said writ of error to effect and answer all [54] costs and damages if he shall fail to make good his plea and shall at all times render himself amenable to the orders and processes of this court or the Appellate Court, and render himself in execution if the judgment of this court is affirmed or any judgment of this court in said proceedings or said Appellate Court, or any court, then this obligation

thirty days from the date of this writ, pursuant to a writ of error filed in the District Court for the District and Territory of Alaska, Division Number 1, at Juneau, Alaska, wherein Eluy Millich (*alias* "Charles Miller") and John Engblad are plaintiffs in error and the United States is defendant in error, then and there to show cause, if any there be, why the said judgment in said case and in said writ of error mentioned should not be corrected and speedy justice should not be done in their behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this 13th day of July, 1921.

ROBERT W. JENNINGS,
Judge.

Filed in the District Court, District of Alaska, First Division. July 13, 1921. J. W. Bell, Clerk. By_____, Deputy.

Copy of the foregoing citation in error received, and service admitted this 12th day of July, 1921.

WALTER SCHAFFNER,
Asst. United States District Attorney. [57]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

Case No. 1452-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ELUY MILLICH, *alias* "CHARLES MILLER,"
and JOHN ENGBLAD,

Defendants.

Writ of Error.

The President of the United States to the Honorable ROBERT W. JENNINGS, Judge of the District Court, District of Alaska, Division Number One, at Juneau, GREETINGS:

Because in the record and proceedings, as also in the rendition of the judgment of a plea in said District Court, before you between the United States of America and Eluy Millich (*alias* "Charles Miller") and John Engblad, manifest error hath happened to the great prejudice and damage of the defendants Eluy Millich and John Engblad as is stated and appears in the petition herein.

We being willing that error, if any hath happened, should be duly corrected and full and speedy justice be done to the parties in this behalf, do command you, if judgment be therein given that then, under your seal, distinctly and openly you send the record and the proceedings aforesaid with all things concerning the same to the United States

Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, together with this writ, so that you [58] have the same before said Court on or before thirty days from the date hereof; that the record and proceedings aforesaid being inspected the Circuit Court of Appeals may cause further to be done therein to correct those errors what of rights and according to the laws and customs of the United States ought to be done or should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, and the seal of the District Court of Alaska, Division Number One, affixed at Ketchikan, this 13th day of July, 1921.

[Seal]

J. W. BELL,
Clerk.

By _____,
Deputy.

Allowed:

ROBERT W. JENNINGS,
Judge.

A copy of the foregoing and within writ of error received this 13th day of July, 1921, and service thereof admitted.

WALTER SCHAFFNER,
Asst. United States Attorney, First Judicial Division, Alaska.

Filed in the District Court, District of Alaska, First Division. July 13, 1921. J. W. Bell, Clerk.
By _____, Deputy. [59]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

Case No. 1452-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ELUY MILLICH, *alias* "CHARLES MILLER,"
and JOHN ENGBLAD,

Defendants.

Assignment of Errors.

COME NOW the above-named defendants and file the following assignment of errors upon which they will rely in their prosecution of the writ of errors in the above-entitled cause from the judgments and proceedings had by this Honorable Court, which said judgments were signed and entered herein in the above-entitled court on the 11th day of May, 1921.

I.

That the District Court for the District of Alaska erred in overruling the demurrer interposed by the defendants and appellants to the indictment and to each and every count thereof, and particularly the demurrer interposed to Count Three of the indictment herein, which said indictment and demurrer are fully set forth in the record herein and are made a part of this assignment of errors.

II.

That the Court erred in refusing to direct a verdict in favor of the defendants *are* the close of the testimony on Count 3 of the indictment.

III.

That the Court erred in overruling plaintiff's motion for a judgment notwithstanding the verdict.

IV.

That the Court erred in overruling plaintiff's motion for a new trial.

V.

That the Court erred in entering judgment against the defendant Eluy Millich. [60]

VI.

That the Court erred in entering judgment against the defendant John Engblad.

And for said errors and other manifest errors of record, the defendants pray that the judgments be reversed and the cause remanded.

HELLENTHAL & HELLENTHAL,
Attorneys for Defendants.

Copy of the foregoing and within assignment of errors received this 13th day of July, 1921, and service thereof admitted.

WALTER SCHAFFNER,
Asst. United States District Attorney.

Filed in the District Court, District of Alaska,
First Division. July 13, 1921. J. W. Bell, Clerk.
By _____, Deputy. [61]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

Order No. 1452-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ELUY MILLICH, *alias* CHARLES MILLER,
and JOHN ENGBLAD,

Defendants.

**Order Extending Time Sixty Days to Complete and
File Record on Appeal (Dated July 15, 1921).**

On motion of Hellenthal & Hellenthal, attorneys for the above-named defendants, made in open court, and it appearing to the Court that the bill of exceptions in the above-entitled cause cannot be settled and the transcript on appeal in said cause cannot be made out in time to reach the Circuit Court of Appeals for the Ninth Circuit at San Francisco within thirty days from the date of the citation herein,—

IT IS ORDERED that sixty days additional is hereby granted in order to forward the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 15th day of July, 1921.

ROBERT W. JENNINGS,

Judge.

O. K.—WALTER SCHAFFNER,

Asst. U. S. Atty.

Filed in the District Court, District of Alaska, First Division. July 15, 1921. J. W. Bell, Clerk. By V. F. Pugh, Deputy.

Entered Court Journal No. 4, page 375, at Ketchikan. [62]

In the District Court for the District of Alaska, Division Number One, at Juneau.

Case No. 1452-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ELUY MILLICH, *alias* CHARLES MILLER,
and JOHN ENGBLAD,

Defendants.

**Order Extending Time Ninety Days to Complete
and File Record on Appeal (Dated September
7, 1921).**

On motion of Hellenthal & Hellenthal, attorneys for the above-named defendants, made in open court, and it appearing to the Court that the bill of exceptions to the above-entitled cause cannot reasonably be settled and the transcript on appeal in said cause cannot be made out in time to reach the Circuit Court of Appeals for the Ninth Circuit within the time in which it was extended in July,—

IT IS ORDERED that ninety days' additional time from the date hereof is hereby granted in order to forward the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 7th day of September, 1921.

ROBERT W. JENNINGS,
Judge.

O. K.—A. G. SHOUP,
U. S. Atty.

Filed in the District Court, District of Alaska, First Division. Sept. 7, 1921. J. W. Bell, Clerk. By V. F. Pugh, Deputy.

Entered Court Journal No. 1, page 79. [63]

In the District Court for the District of Alaska, Division Number One, at Juneau.

Case No. 1452-B.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

ELUY MILLICH, *alias* CHARLES MILLER,
and JOHN ENGBLAD,

Defendants.

Order Extending Time Forty Days to Complete and File Record on Appeal (Dated November 22, 1921).

On motion of Hellenthal & Hellenthal, attorneys for the defendant above-named, made in open court, and it appearing to the Court that the bill of exceptions in the above-entitled cause cannot be settled and the transcript on appeal in this case cannot be made out in time to reach the Circuit Court

of Appeals for the Ninth Circuit at San Francisco within the time granted in the citation and the extension granted.—

IT IS ORDERED that forty days' additional time from the date hereof is hereby granted in order to forward the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 22d day of November, 1921.

THOS. M. REED,
Judge.

O. K.—A. G. SHOUP,
U. S. Atty.

Filed in the District Court, District of Alaska, First Division. Nov. 22, 1921. John H. Dunn, Clerk. By W. B. King, Deputy.

Entered Court Journal No. 1, page 145. [64]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

Case No. 1452-B.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

ELUY MILLICH, *alias* CHARLES MILLER,
and JOHN ENGBLAD,
Defendants.

Order Extending Time to and Including January 10, 1922, to Complete and File Record on Appeal (Dated December 16, 1921.)

On motion of Hellenthal & Hellenthal, attorneys for the defendant above-named, made in open court, and it appearing to the Court that the transcript on appeal in this case cannot be made out in time to reach the Circuit Court of Appeals for the Ninth Circuit at San Francisco within the time granted in the citation and the extension granted,—

IT IS ORDERED that an extension of time to and including January 10, 1922, is hereby granted in order to forward the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 16th day of December, 1921.

THOS. M. REED,
Judge.

O. K.—A. G. SHOUP,
U. S. Atty.

Filed in the District Court, District of Alaska,
First Division. Dec. 16. John H. Dunn, Clerk.
By L. E. Spray, Deputy. [65]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

Case No. 1452-B.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

ELUY MILLICH, *alias* CHARLES MILLER,
and JOHN ENGBLAD,

Defendants.

Praecept for Transcript of Record.

Kindly prepare certified copies for transmission to the Circuit Court of Appeals in connection with your return on the writ of error herein as follows:

1. Indictment.
2. Plea to the indictment.
3. Bill of exceptions.
4. Judgment against Charles Miller, dated May, 11, 1921.
5. Petition for writ of error.
6. Order allowing writ of error and fixing amount of supersedeas bond.
7. Supersedeas bond.
8. Citation.
9. Writ of error.
10. Assignments of error.
11. All orders extending time for the settlement of bill of exceptions or extending time for the return on the citation.

HELLENHAL & HELLENTHAL,

Attorneys for Defendants.

Filed in the District Court, District of Alaska,
First Division. Dec. 13, 1921. John H. Dunn,
Clerk. By L. E. Spray, Deputy. [66]

In the District Court for the District of Alaska,
Division No. 1, at Juneau.

**Certificate of Clerk U. S. District Court to Trans-
cript of Record.**

United States of America,
District of Alaska,
Division No. 1,—ss.

I, John H. Dunn, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 66 pages of typewritten matter, numbered from one to 66, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the record prepared in accordance with the praecipe of attorneys for plaintiff in error on file in my office and made a part hereof, in Cause No. 1452-B, wherein Eluy Millich, alias "Charles Miller," and John Engblad are defendants and plaintiffs in error and The United States of America is plaintiff and defendant in error.

I further certify that the said record is by virtue of a writ of error and citation issued in this cause and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate amounting to

the sum of thirty dollars (\$30.00) has been paid to me by counsel for plaintiffs in error.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled court this 16th day of December, 1921.

[Seal]

JOHN H. DUNN,

Clerk.

By _____,

Deputy. [67]

[Endorsed]: No. 3814. United States Circuit Court of Appeals for the Ninth Circuit, Eluy Millich, *alias* "Charles Miller," and John Engblad, Plaintiffs in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Alaska, Division No. 1.

Filed December 27, 1921.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.